

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H,
MARY DOE and MARY ROE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GRETCHEN WHITMER, Governor of the
State of Michigan, and COL. JOSEPH
GASPER, Director of the Michigan State
Police, in their official capacities,

Defendants.

No. 2:22-cv-10209

Hon. Mark A. Goldsmith

Mag. J. Curtis Ivy, Jr.

**PLAINTIFFS' RESPONSE TO DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs write briefly to respond to Defendants' notice of a recent district court decision dismissing an action for damages that challenged a prior version of Michigan's Sex Offenders Registration Act (SORA) that is no longer on the books. *See* ECF No. 51, PageID.1804–1805 (citing *Doe 1-5 v. Whitmer*, No. 21-11903, ECF No. 18 (E.D. Mich., Sept. 8, 2022)). The statute of limitations discussion in *Doe 1-5* is inapposite with respect to Plaintiffs' challenge seeking injunctive and declaratory relief against the ongoing enforcement of SORA 2021. "[T]he continued enforcement of a statute inflicts a continuing or repeated harm" and thus "a new limitations period commences . . . with each new injury." *Flynt v. Shimazu*, 940 F.3d

457, 462 (9th Cir. 2019) (collecting cases). The Sixth Circuit has therefore held that while the statute of limitations delimits how far back one can recover damages, “[t]he continued enforcement of an unconstitutional statute cannot be insulated by the statute of limitations.” *Kuhnle Bros., Inc. v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997) (cleaned up). Moreover, the plaintiffs in *Doe 1-5* conceded the applicability of the statute of limitations defense. *See Doe 1-5 v. Whitmer*, No. 21-11903, ECF No. 15 (E.D. Mich.). Here, Plaintiffs contest the applicability of Defendants’ limitations defense. *See* ECF No. 44, PageID.1585–1591.

Respectfully submitted,

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LOCAL RULE CERTIFICATION

I, Miriam J. Aukerman, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted material and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts).

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